



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.15701 OF 2022

- | | | | |
|----|--------------------------------|---|----------------|
| 1. | Anant Keshav Rajegaonkar |] | |
| | Age: Adult, Occ : Business |] | |
| | Residing at Bungalor No.2 |] | |
| | Subham Model Colony |] | |
| | Bhonsala Military School |] | |
| | Nashik – 422 005. |] | |
| 2. | Anil Bhavarlal Jain |] | |
| | Age : 50, Occ : Business |] | |
| | Residing at 11, Snehmurkute |] | |
| | Gangapur Road, Nashik-422 022. |] | ...Petitioners |

V/s.

- | | | | |
|----|-----------------------------------|---|----------------|
| 1. | The State of Maharashtra |] | |
| | Through the Collector |] | |
| | District: Nashik. |] | |
| 2. | The Nashik Municipal Corporation |] | |
| | Through its Commissioner |] | |
| | Sharanpur Road, Nashik. |] | |
| 3. | The Department of Town Planning |] | |
| | Through Director of Town Planning |] | |
| | Pune. |] | |
| 4. | The Assistant Director |] | |
| | Town Planning and Valuation |] | |
| | Nashik. |] | |
| 5. | Ministry of Town Planning |] | |
| | Maharashtra, |] | |
| | Through its Secretary |] | |
| | Mantralaya, Mumbai. |] | |
| 6. | The Estate Manager |] | |
| | The Nashik Municipal Corporation |] | |
| | Sharanpur Road, Nashik. |] | ...Respondents |

Mr. Vivek Punjabi for the Petitioners.

Mr. A.A. Alaspurkar, AGP, for the State for Respondent Nos.1, 3, 4 & 5.

Mr. M.L. Patil a/w Ms. Chaitrali A. Deshmukh for Respondent Nos.2 & 6.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 14th January, 2025

PRONOUNCED ON : 23rd April, 2025

JUDGMENT (Per Kamal Khata, J) :

1) Rule. Rule returnable forthwith and heard finally with the consent of parties.

2) By this Writ Petition under Article 226 of the Constitution of India, the Petitioners seek a direction to the Respondents, to declare that the reservation of Cattle-Farm and Development Plan Road on their land bearing Survey No.271/4 admeasuring 1 hectare 1 R situated at District Nasik ('writ land') has lapsed as per Section 127 of the Maharashtra Regional Town Planning Act, 1966 (MRTP Act). Additionally, they seek a direction to declare that, the subsequent reservation after issuance of the Purchase Notice as illegal.

3) The undisputed facts are as under:

i) In 1994, the writ land was reserved as for the purpose of Cattle Farm and Development Plan

Road as per the Sanctioned Development Plan of the Nasik Municipal Corporation.

- ii) The 10-year statutory period for acquiring the writ land expired in 2004.
- iii) Purchase Notice was issued by the Petitioners on 24th January 2009.
- iv) The statutory period of one year after issuance of the Purchase Notice under Section 127 of the MRTP Act for acquisition of the writ land expired on 24th January 2010.
- v) Admittedly, no steps, for acquisition of the writ land have been taken as contemplated in law upto 23rd September, 2014, as per the response to the RTI Application, received by the Petitioners.

3.1) Mr. Vivek Punjabi, learned counsel for the Petitioners submitted that, the reservation of the writ land for “fair ground” in the Revised Development Plan of 2017 was beyond the expiration of the one-year period of the Purchase Notice and therefore, the same was illegal and bad in law. Moreover, the Petitioners had submitted all the documents, as sought by the Respondent, by their letter dated 11th September 2009 annexed to the rejoinder. In support of his contentions, he relied on the following decisions:

- 1) Girnar Traders v/s. State of Maharashtra, reported in (2007) 7 SCC 555;
- 2) Shri Prakash R. Gupta v/s. Lonavala Municipal Council, reported in (2009) 1 SCC 514;
- 3) Shrirampur Municipal Council v/s. Satyabhamabai Bhimaji Davkher and Ors., reported in (2013) 5 SCC 627; and
- 4) Godrej and Boyce Manufacturing Company Ltd. v/s. State of Maharashtra reported in (2015) 11 SCC 554.

4) *Per contra*, Mr. M. L. Patil, learned counsel appearing for the Respondents submitted that, on 4 March 2009, the Petitioners were called upon to submit the copies of the documents of ownership/title, original 7/12 extract of the current financial year, copy of the statement and map submitted before the Additional Collector and competent Authority under the ULC Act, the certificate of the Additional Collector and competent Authority under the ULC Act in case the land fell outside the Nasik Urban Agglomeration and the certificate that the land was not surplus, the original measurement map from the office of the City Survey Officer, if the layout was sanctioned, then the copy of map, order and agreement, the measurement map prepared by the Taluka Inspector of Land Records. He submitted that the notice did not contain the name of the owners and their signatures, and a copy of the registered General

Power of Attorney. Additionally, he submitted that, the Corporation required the land for the purpose of cattle farm/fair ground as per their Revised Development Plan of 2017 and was ready and willing to grant TDR as permissible in consideration thereof. He accordingly submitted that, the Petition was thus liable to be dismissed.

5) We have heard the counsel for the parties and perused the entire record and proceedings before us.

6) The two issues that arise for our consideration are:

- (i) whether the Purchase Notice is defective for lack of documents; and
- (ii) whether the subsequent reservation after expiry of the one-year statutory period after issuance of Purchase Notice is valid and binding on the Petitioners.

6.1) Since we are considering the aspect of Purchase notice under Section 127 of the MRTP Act, we reproduce the same hereunder for ready reference:

“(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force [or if a declaration under sub-section (2) or (4) of section 126 is not published in the *Official Gazette* within such period, the owner or any person interested in the land may

serve notice, along with the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within [twenty-four months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

(2) On lapsing of reservation, allocation or designation of any land under sub-section(1), the Government shall notify the same, by an order published in the *Official Gazette*.]"

7) The period of twelve months was substituted by twenty-four months by an amendment that came into effect from 29th August 2015. Hence the period of twelve months from the date of service of the Purchase notice will be applicable in the present case.

8) According to us, the submission of documents, showing title or interest in the said land along with the Purchase Notice to the concerned Authority as per Section 127(1) is intended to facilitate clear transfer of title from the owner or the person interested in the land upon payment of the consideration to the claimant within the stipulated period of 12/24 months as the case may be.

9) In our view, after the expiry of the stipulated period of 6/12/24 months (as the case may be) under section 127 (1) of service of Purchase Notice, the land is not acquired or no steps as contemplated under the section are commenced for its acquisition, and thereupon the land is deemed to be released from such reservation, allotment or designation in such circumstances, the concerned authority cannot raise a defense that the Purchase Notice was defective as it was not accompanied by the documents showing his title or interest in the said land.

10) In other words, the concerned Authority or State cannot take up a defense of a defective Purchase Notice for want of documents showing title or interest in the said lands, when it has failed to take steps to acquire the property within the stipulated period as contemplated by the MRTP Act. Because, such documents are not required for release of the property from reservation, allotment or designation when the land is not acquired or no steps are commenced for its acquisition, reservation or allotment as provided in the MRTP Act on account of the lapsing of reservation. This is so because the land or property is being released to the owner, whosoever it may be. According to us, There is no “transfer” of right title or interest in the reserved land upon “release” from reservation, allotment or designation. **If there is a dispute regarding the ownership of the land or property, the authority is not concerned,**

and that issue has to be decided by the jurisdictional Civil Court.

Consequently, the right to develop the said land would depend upon the final adjudication of the dispute, if any.

11) Therefore, the concerned Authority cannot claim a Purchase Notice to be defective, in defense to resist or deny releasing the land or property from such reservation, allotment or designation or declaring that, the property or land is deemed to be released from such reservation, allotment or designation to become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

12) In other words, the owners or the person having interest in the property will not be able to claim lapsing of reservation if the steps for acquisition could not be concluded for want of documents of title within the statutory period of one/two years as the case may be.

13) In *Dina Sohrab Hakim and Another v/s. State of Maharashtra* reported in 2002 (2) *Mh.L.J* 851 this Court held that, Notice under Section 127 of the MRTP Act does not contemplate an investigation into title by the concerned Authority, nor can the concerned Authority prevent running of time if there is a valid Notice. Further it held that, the Executive Engineer of the Municipal Corporation was not justified in addressing the letter by which he required the owners to furnish information regarding their title,

ownership, and particulars of the tenants, the nature and user of tenements and the total areas occupied by them. It held that, the Corporation had the requisite information in their records or that it had access to all land records following the judgment of the Supreme Court in *Municipal Corporation of Greater Bombay vs Dr. Hakimwadi Tenants' Association and Others* reported in 1988 (Supp) SCC 55.

13.1) In *M/s C. V. Shah v/s. The State of Maharashtra and Others* reported in 2005 SC OnLine Bom 542 the Court held that, the object of the Notice under section 127 is to inform the Authority to acquire the land which is reserved, designated or allotted in the final development plan. It held that the notice need not set out all the facts and details of the reservation/designation or that the said land has not been acquired within 10 years of the coming into force of the final development plan. The word 'Notice' denotes an intimation to the party concerned of a particular fact. Notice may take several forms and that is not prescribed under Section 127. If Notice describes the land with sufficient clarity and requires the concerned Authority to acquire or compulsorily purchase the land do reserved/designated/allotted then it would meet sufficient compliance.

13.2) In *Popat Kisan Mhaske and Anr. v/s. Hon'ble Minister for Urban Development, Mumbai* reported in 2018(2) Mh.L.J 435 this

Court has held that, non-issuance of the **requisite** documents together with Purchase Notice cannot invalidate the Purchase Notice.

13.3) In *Chinmay Gurunath Parale v/s. State of Maharashtra and others* reported in *2023 SCC OnLine Bom 827* this Court held that, non-submission of the title documents along with the Purchase Notice would not render the Purchase Notice invalid.

14) With regard to the contention that the said land was reserved after the expiry of the statutory period of two years of the issuance of Purchase Notice, this Court in *Santu Sukhdeo Jaibhave v/s. Nasik Municipal Corporation* reported in *2022 SCC OnLine Bom 5273* has held that, the publication of the Draft Revised Plan prior to the issuance of Purchase Notice cannot have an effect of continuing the reservation on account of the same being sanctioned subsequently.

15) In the present case, the Purchase Notice gave a clear description of the land that was to be released and thus the contention that the Notice was vague for want of particulars cannot be accepted. Moreover, the Petitioner has annexed letter dated 11th September 2009 with which the necessary documents were submitted. It also bares the Respondent's stamp acknowledging receipt. The said letter is annexed to Petitioner's Affidavit in Rejoinder. Thus, the mere denial of receipt of documents cannot be sustained.

16) The further reservation came to be issued after the statutory period of the Purchase Notice had lapsed. Hence the ratio in Santu Jaibhave's case (supra) is clearly applicable to this case. Consequently, that defense too is unsustainable. Hence on both grounds, the defense of the Respondent cannot be sustained and is rejected.

17) In view of the above discussion, we pass the following order:-

- (i) We direct the State to take steps to notify all concerned Authorities lapsing of the writ lands within a period of six weeks from the date of the Order.
- (ii) We direct the State to take steps to notify all concerned Authorities to notify the lapsing of lands, for which no steps as contemplated in law have been taken within the statutory period of issuance of the Purchase Notice, to prevent the filing of such Petitions for declarations or publishing of notifications.
- (iii) Rule is made absolute in the aforesaid terms.

(KAMAL KHATA, J)

(A. S. GADKARI, J.)